

4

REGULAR

NUMBER: 38.767

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTIONS 2, 4, 7, 8, 9, 18, 19, 21, 22, 30, 31, 35, 38, 53, 54, 57, 64 OF CHAPTER 10, TITLE XI AND SECTION 4 OF CHAPTER 1, TITLE XI OF THE MILPITAS MUNICIPAL CODE.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by Councilmember \_\_\_\_\_ and was adopted (Second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by Councilmember \_\_\_\_\_. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals and Findings.

- A. Pursuant to Government Code section 65853 and 65854, the Planning Commission of the City of Milpitas held a properly noticed public hearing August 10, 2005 to consider the amendments to Title XI, Chapter 4 and Chapter 10 of the Milpitas Municipal Code. In accordance with Government Code section 65855, the Planning Commission has rendered a decision in the form of a written recommendation, which was presented to the City Council prior to consideration of this Ordinance.
- B. Upon receipt of the Planning Commission's written recommendation, the City Council held a properly noticed public hearing on September 6, 2005.
- C. The City Council finds that this Ordinance does not render Title XI, Chapter 4 or Chapter 10 inconsistent with the City of Milpitas General Plan.

SECTION 2. Title XI Chapter 10 (Planning, Zoning and Annexation) of the Milpitas Municipal Code is hereby amended with the addition of the following new subsections:

Section 2 - Definitions

**2.41 Food Store**

An establishment where any portion of the gross floor area is devoted to the sale of food products for home preparation and consumption, as well as other convenience and household goods.

**2.78-1.5 Vocational School**

Vocational schools, including business, professional, technical and trade schools where training is conducted in a classroom setting and educational credits, degrees or certificates of completion are earned or granted.

**2.67-2.05 Redevelopment**

The removal of buildings or structures from a parcel or assembled parcels and the construction or erection of other buildings or structures thereon, including infill development.

**2.43-1 Infill Development**

The development of vacant or partially developed parcel(s) that have been by-passed as a result of continual urban development, and are substantially surrounded by areas that are fully developed.

## **2.60-1 Private Open Space Recreational Facility**

Any amenity for private recreational purposes including, but not limited to, tot-lots, children's play equipment, picnic and barbecue facilities, play fields, athletic courts, swimming pool, fitness equipment, recreation buildings and usable open space.

## **Section 4-"R1" Single-Family Residence District**

- 4.04-1.1** Educational institution
- 4.04-7** Helicopter pads for medical evacuation purposes.
- 4.04-8** (\*) Cemetery.
- 4.04-9** (\*) Columbarium, crematory or mausoleum.
- 4.04-10** (\*) Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 4.04-11** (\*) Farmers market, excluding flea market.
- 4.04-12** Government enterprise (Federal, State and Local).
- 4.04-13** Hospital or sanitarium.
- 4.04-14** Library or museum, public.
- 4.04-15** Nursery or greenhouse.
- 4.04-16** Park, playground, or recreational or community center.
- 4.04-17** Philanthropic institution.
- 4.04-18** (\*) Fraternity or sorority house.
- 4.04-19** Public utility and public service use or structure.
- 4.04-20** Radio or television transmitter.
- 4.04-21** Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 4.04-22** Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

- A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or

two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and
  2. All required building permits are obtained.
- B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:
1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and
  2. All required building permits shall be obtained.
- C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**4.04-23** Public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial district.

**4.04-24** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**4.04-25** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**4.04-26** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**4.04-27** Reduction in the lot width requirements.

#### **Section 6-"R2" One and Two-family Residence District**

**6.04-3.1** Educational institution

**6.04-7** Helicopter pads for medical evacuation purposes.

**6.04.8** Cemetery.

**6.04.9** Columbarium, crematory or mausoleum.

**6.04.10** Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.

- 6.04.11 Farmers market, excluding flea market.
- ~~6.04.12 Government enterprise (Federal, State and Local).~~
- 6.04.13 Hospital or sanitarium.
- 6.04.14 Library or museum, public.
- 6.04.15 Nursery or greenhouse.
- 6.04.16 Park, playground, or recreational or community center.
- 6.04.17 Philanthropic institution.
- 6.04.18 Fraternity or sorority house.
- 6.04.19 Public utility and public service use or structure.
- 6.04.20 Radio or television transmitter.
- 6.04.21 Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 6.04.22 Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and
2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and
2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**6.04-23** Public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial district.

**6.04-24** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**6.04-25** In districts limiting the height to two and one-half (2 1/2) stories, thirty-five (35) feet, or three (3) stories, forty-five (45) feet, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six (6) stories or seventy-five (75) feet.

**6.04-26** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**6.04-27** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**6.04-28** Reduction in the lot width requirements. (Ord. 38.763 (11), 4/20/04; Ord. 38.702 (1) (part), 8/15/95; Ord. 38.339 (part), 2/19/74; Ord. 38.207 (part), 11/17/70; Ord. 38 (part), 3/15/55)

#### **Section 7-"R-3" Multi-Family High Density District**

**7.04-7.1** Educational institution.

**7.04-12.** Helicopter pads for medical evacuation purposes.

**7.04-13.** Cemetery.

**7.04-14.** Columbarium, crematory or mausoleum.

**7.04-15.** Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto

**7.04-16.** Educational institution.

**7.04-17.** Farmers market, excluding flea market.

**7.04-18.** Government enterprise (Federal, State and Local).

**7.04-19.** Hospital or sanitarium.

**7.04-20.** Library or museum, public.

- 7.04-21. Nursery or greenhouse.
- 7.04-22. Park, playground, or recreational or community center.
- 7.04-23. Philanthropic institution.
- 7.04-24. Fraternity or sorority house.
- 7.04-25. Public utility and public service use or structure.
- 7.04-26. Radio or television transmitter.
- 7.04-27. Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 7.04-28. Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and
2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and
2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

7.04-29 Public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial district.

**7.04-30** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**7.04-31** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**7.04-32** In districts limiting the height to two and one-half (2 1/2) stories, thirty-five (35) feet, or three (3) stories, forty-five (45) feet, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six (6) stories or seventy-five (75) feet, provided, that the front and side yard requirements for such buildings in the "R3" District are complied with.

**7.04-33** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**7.04-34** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**7.04-35** Reduction in the lot width requirements.

**7.07.3.1** For a project that is one hundred (100) dwelling units or greater, there shall be a minimum of five (5) private open space recreational facilities provided within the project site.

## **Section 8-"R4" Multi-Family Very High Density District**

**8.04-9.1** Helicopter pads for medical evacuation purposes.



- 8.04-10 Cemetery.
- 8.04-11 Columbarium, crematory or mausoleum.
- 8.04-12 Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 8.04-13 Educational institution.
- 8.04-14 Farmers market, excluding flea market.
- 8.04-15 Government enterprise (Federal, State and Local).
- 8.04-16 Hospital or sanitarium.
- 8.04-17 Library or museum, public.
- 8.04-18 Nursery or greenhouse.
- 8.04-19 Philanthropic institution.
- 8.04-20 Fraternity or sorority house.
- 8.04-21 Radio or television transmitter.
- 8.04-22 Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 8.04-23 Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**8.04-24** Public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial district.

**8.04-25** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**8.04-26** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**8.04-27** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**8.04-28** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**8.04-29** Reduction in the lot width requirements

**8.07-4** For a project that is one hundred (100) dwelling units or greater, there shall be a minimum of five (5) private open space recreational facilities provided within the project site.

## **Section 17-"CO" Administrative and Professional Office District**

- 17.04-3.1 Cemetery
- 17.04-10. Airport or aircraft landing field.
- 17.04-11. Helicopter pads for medical evacuation purposes.
- 17.04-12. Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 17.04-13. Educational institution.
- 17.04-13.1 Fraternity or sorority house.
- 17.04-14. Farmers market, excluding flea market.
- 17.04-15. Government enterprise (Federal, State and Local).
- 17.04-16. Library or museum, public.
- 17.04-17. Nursery or greenhouse.
- 17.04-18. Park, playground, or recreational or community center.
- 17.04-19. Philanthropic institution.
- 17.04-20. Correctional facility.
- 17.04-21. Private club.
- 17.04-22. Public utility and public service use or structure.
- 17.04-23. Radio or television transmitter.
- 17.04-24. Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 17.04-25. Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and
2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**17.04-26.** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**17.04-27.** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**17.04-28.** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**17.04-29.** Any permitted "C" District use.

**17.04-30.** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**17.04-31.** Reduction in the lot width requirements.

## **Section 18-"C1" Neighborhood Commercial**

- 18.02-2.5 Any use permitted in the CO Administrative and Professional Office District.
- 18.03-24. Airport or aircraft landing field.
- 18.03-25. Helicopter pads for medical evacuation purposes.
- 18.03-26. Cemetery.
- 18.03-27. Columbarium, crematory or mausoleum.
- 18.03-28. Mortuaries and funeral homes.
- 18.03-29. Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 18.03-30. Educational institution.
- 18.03-30.1 Fraternity or sorority house.
- 18.03-31 Flea market, excluding flea market.
- 18.03-32 Government enterprise (Federal, State and Local).
- 18.03-33 Hospital or sanitarium.
- 18.03-34 Library or museum, public.
- 18.03-35 Nursery or greenhouse.
- 18.03-36 Park, playground, or recreational or community center.
- 18.03-37 Philanthropic institution.
- 18.03-38 Correctional facility.
- 18.03-39 Radio or television transmitter.
- 18.03-40 Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 18.03-41 Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**18.03-42** Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**18.03-43** Permit the addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**18.03-44** Permit the use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**18.03-45** Any permitted "C2" District use and any conditional "CO" District use provided the conditional "CO" use is not already identified within Section 18.03.

**18.03-46** Permit temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for

security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**18.03-47** Permit the reduction in the lot width requirements. (Ord. 38.761 (part), 5/20/03; Ord. 38.760 (3), 9/17/02; Ord. 38.711 (part), 8/20/96; Ord. 38.702 (1) (part), 8/15/95; Ord. 38.697 (1) (part), 12/20/94; Ord. 38.662 (A) (part), 1/8/91; Ord. 38.551, 9/7/82; Ord. 38 (part), 3/15/55)

### **Section 19-"C2" General Commercial District**

- 19.03-17.1** Farmers market, excluding flea market.
- 19.03-18.1** Cemetery.
- 19.03-18.2** Columbarium, crematory, mausoleum.
- 19.03-43** Airport or aircraft landing field.
- 19.03-44** Helicopter pads for medical evacuation purposes.
- 19.03-45** Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 19.03-46** Educational institution.
- 19.03-46.1** Fraternity or sorority house.
- 19.03-47** Government enterprise (Federal, State and Local).
- 19.03-48** Library or museum, public.
- 19.03-49** Park, playground, or recreational or community center.
- 19.03-50** Philanthropic institution.
- 19.03-51** Correctional facility.
- 19.03-52** Radio or television transmitter.
- 19.03-53** Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 19.03-53.1** Vocational school.
- 19.03-54** Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from

obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**19.03-55** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**19.03-56** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**19.03-57** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**19.03-58** Any conditional "C" District use and any conditional "M1" District use, provided the use is not already identified within Section 19.02.

**19.03-59** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in



developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**19.03-60** Reduction in the lot width requirements.

### **Section 21-"HS" Highway Services**

- 21.02-4.5** Auto parts sales ancillary to installation.
- 21.03-10.1** Farmers market, excluding flea market.
- 21.03-11.1** Cemetery.
- 21.03-11.2** Columbarium, crematory or mausoleum.
- 21.03-22** Airport or aircraft landing field.
- 21.03-23** Helicopter pads for medical evacuation purposes.
- 21.03-24** Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 21.03-25** Educational institution.
- 21.03-25.1** Fraternity or sorority house.
- 21.03-26** Government enterprise (Federal, State and Local).
- 21.03-27** Hospital or sanitarium.
- 21.03-28** Library or museum, public.
- 21.03-29** Nursery or greenhouse.
- 21.03-30** Park, playground, or recreational or community center.
- 21.03-31** Philanthropic institution.
- 21.03-32** Correctional facility.
- 21.03-33** Private club.
- 21.03-34** Fraternity or sorority house.
- 21.03-35** Radio or television transmitter.
- 21.03-36** Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 21.03-37** Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the

community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**21.03-38** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**21.03-39** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**21.03-40** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

- 21.03-41** temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity
- 21.03-42** Reduction in the lot width requirements.

### **Section 22-"TC" Town Center District**

- 21.02-38.1** Wholesale or discount merchandise broker, excluding exterior storage.
- 22.04-3-3** Food stores
- 22.04-12** Airport or aircraft landing field.
- 22.04-13** Helicopter pads for medical evacuation purposes.
- 22.04-14** Cemetery.
- 22.04-15** Columbarium, crematory or mausoleum.
- 22.04-16** Mortuaries and funeral homes.
- 22.04-17** Educational institution.
- 22.04-18** Government enterprise (Federal, State and Local).
- 22.04-19** Hospital or sanitarium.
- 22.04-20** Library or museum, public.
- 22.04-21** Park, playground, or recreational or community center.
- 22.04-22** Philanthropic institution.
- 22.04-23** Private club.
- 22.04-24** Fraternity or sorority house.
- 22.04-25** Radio or television transmitter.
- 22.04-26** Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 22.04-27** Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**22.04-28** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**22.04-29** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**22.04-30** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located

**22.04-31** Any permitted or conditional "C" District use, provided the use is not already identified within Section 22.02.

**22.04-32** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**22.04-33** Reduction in the lot width requirements

**Section 30-"M1" Light Industrial District**

- 30.02-6.1** Printing shops, business-to-business only.
- 30.02-8.1** Fish breeding for wholesale distribution when occurring entirely indoors.
- 30.03-14** Airport or aircraft landing field.
- 30.03-15** Helicopter pads for medical evacuation purposes.
- 30.03-16** Cemetery.
- 30.03-17** Columbarium, crematory or mausoleum.
- 30.03-18.1** Mortuaries and funeral homes.
- 30.03-18.2** Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 30.03-18.3** Educational institution.
- 30.03-20.1** Fraternity or sorority house.
- 30.03-21** Government enterprise (Federal, State and Local).
- 30.03-22** Farmers market, excluding flea market.
- 30.03-23** Hospital or sanitarium.
- 30.03-24** Library or museum, public.
- 30.03-25** Nursery or greenhouse.
- 30.03-26** Philanthropic institution.
- 30.03-27** Correctional facility.
- 30.03-28** Private club.
- 30.03-29** Public utility and public service use or structure.
- 30.03-30** Radio or television transmitter.
- 30.03-31** Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 30.03-32** Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the

community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**30.03-33** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**30.03-34** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**30.03-35** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**30.03-36** Any permitted "M2" District use, provided the use is not already identified within Section 30.02.

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**30.03-37** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**30.03-38** Reduction in the lot width requirements.

**Section 31-"M2" Heavy Industrial District**

- 31.02-6.1** Printing shops, business-to-business.
- 31.03-15** Airport or aircraft landing field.
- 31.03-16** Helicopter pads for medical evacuation purposes.
- 31.03-17** Cemetery.
- 31.03-18** Columbarium, crematory or mausoleum.
- 31.03-19** Mortuaries and funeral homes
- 31.03-20** Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 31.03-21** Educational institution.
- 31.03-21.1** Fraternity or sorority house.
- 31.03-22** Government enterprise (Federal, State and Local).
- 31.03-23** Farmers market, excluding flea market.
- 31.03-24** Hospital or sanitarium.
- 31.03-25** Library or museum, public.
- 31.03-26** Nursery or greenhouse.
- 31.03-27** Philanthropic institution.
- 31.03-28** Correctional facility.
- 31.03-29** Private club.
- 31.03-30** Public utility and public service use or structure.
- 31.03-31** Radio or television transmitter.
- 31.03-32** Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 31.03-33** Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly

development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

- A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:
  - 1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and
  - 2. All required building permits are obtained.
- B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:
  - 1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and
  - 2. All required building permits shall be obtained.
- C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**31.03-34** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**31.03-35** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**31.03-36** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3)



years, for a use other than that permitted in the district in which such nonconforming building is located.

**31.03-37** Any conditional "M1" District use; provided the use is not already identified within Section 31.02.

**31.03-38** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**31.03-39** Reduction in the lot width requirements.

### **Section 35-"MP" Industrial Park District**

- 35.02-6.1** Printing shops, business-to-business only.
- 35.04-8.1** Public utility and public service use or structure.
- 35.04-13** Veterinary clinic, hospital or kennel.
- 35.04-14** Wholesale business, storage building and warehouse.
- 35.04-15** Airport or aircraft landing field.
- 35.04-16** Helicopter pads for medical evacuation purposes.
- 35.04-17** Cemetery.
- 35.04-18** Columbarium, crematory or mausoleum.
- 35.04-19** Mortuaries and funeral homes.
- 35.04-20** Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 35.04-21** Educational institution.
- 35.04-21.1** Fraternity or sorority house.
- 35.04-22** Farmers market, excluding flea market.
- 35.04-23** Government enterprise (Federal, State and Local).
- 35.04-24** Hospital or sanitarium.
- 35.04-25** Library or museum, public.
- 35.04-26** Nursery or greenhouse.
- 35.04-27** Recreational or community center.
- 35.04-28** Philanthropic institution.
- 35.04-29** Correctional facility.
- 35.04-30** Private club.
- 35.04-31** Radio or television transmitter.
- 35.04-32** Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 35.04-33** Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication

facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**35.04-34** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**35.04-35** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential

use. These criteria are established so as not to prolong the life of the original building or structure.

**35.04-36** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**35.04-37** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**35.04-38** Reduction in the lot width requirements.

#### **Section 38-"MXD" Mixed Use District**

**38.03-5** Helicopter pads for medical evacuation purposes.

**38.03-6** Mortuaries and funeral homes.

**38.03-7** Educational institution.

**38.03-8** Government enterprise (Federal, State and Local).

**38.03-9** Farmers market, excluding flea market.

**38.03-10** Hospital or sanitarium.

**38.03-11** Library or museum, public.

**38.03-12** Park, playground, or recreational or community center.

**38.03-13** Philanthropic institution.

**38.03-14** Private club.

**38.03-15** Fraternity or sorority house.

**38.03-16** Public utility and public service use or structure.

**38.03-17** Radio or television transmitter.

**38.03-18** Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.

**38.03-19** Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the

community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**38.03-20** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**38.03-21** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**38.03-22** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**38.03-23** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-

related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**38.03-24** Reduction in the lot width requirements.

**38.07-3** A minimum of one hundred (100)-square feet on the ground floor and sixty (60) square feet on the second level and above of "Usable Open Space" shall be provided for each dwelling unit.

### **Section 39-POS Park and Public Open Space District**

**39.03-5** Farmers market, excluding flea market.

**39.03-6** Government enterprise (Federal, State and Local).

**39.03-7** Library or museum, public.

**39.03-8** Philanthropic institution.

**39.03-9** Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.

**39.03-10** Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**39.03-11** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**39.03-12** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**39.03-13** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**39.03-14** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**39.03-15** Agricultural uses including ranch, farm dwellings and quarters, accommodations or areas for transient labor, such as labor cabins or camps.

#### **Section 40 "A" Agricultural District**

**40.04.61** Mortuaries and funeral homes

**40.04-11** Airport or aircraft landing field.

- 40.04-12 Helicopter pads for medical evacuation purposes.
- 40.04-13 Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- 40.04-14 Educational institution.
- 40.04-14.1 Fraternity or sorority house.
- 40.04-15 Farmers market, excluding flea market.
- 40.04-16 Government enterprise (Federal, State and Local).
- 40.04-17 Hospital or sanitarium.
- 40.04-18 Library or museum, public.
- 40.04-19 Nursery or greenhouse.
- 40.04-20 Recreational or community center.
- 40.04-21 Philanthropic institution.
- 40.04-22 Correctional facility.
- 40.04-23 Private club.
- 40.04-24 Fraternity or sorority house.
- 40.04-25 Radio or television transmitter.
- 40.04-26 Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.
- 40.04-27 Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

- A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:
1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and
  2. All required building permits are obtained.
- B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

**40.04-28** Modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

**40.04-29** Addition or enlargement of a non-conforming building or structure, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

**40.04-30** Use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.

**40.04-31** Temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

**40.04-32** Reduction in the lot width requirements.

### **Section 53-Off-Street Parking Regulations**

**53.23-2 (17)** Athletic facilities      3.5 sp/1,000 sq. ft. GFA



## **Section 54-General Provisions**

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**54.08-4** Exceptions: The following Home Occupations are exempt from Section 54.08:

**54.08-4.1** Small family child care homes.

**54.08-4.2** Large family child care homes, subject to the regulations set forth in Section XI-54.16.

**54.16-2.1** Administrative permits for large family child care homes shall comply with State Code and require public notification to all property owners within a 100-foot radius of the exterior boundaries of the proposed large family child care home 10 days prior to the decision. No public hearing shall be required unless a hearing is requested by the applicant or other affected person. Large family child care homes shall comply with all applicable licensing requirements.

**54.20-3** City Council Review of Permits Associated with Density Bonus. The City Council shall have approval authority, upon recommendation by the Planning Commission, of all associated permits related to a Density Bonus that are otherwise approved by the Planning Commission.

~~SECTION 3. Sections 2, 4, 7, 8, 9, 18, 19, 21, 22, 30, 31, 35, 38, 53, 54, 57, and 64 of Title XI Chapter 10 (Zoning, Planning and Annexation) and Section 4 of Title XI Chapter 1 (Subdivisions) of the Milpitas Municipal Code are amended as follows (new text is underlined and strike through text is to be deleted):~~

## **Section 2 – Definitions**

### **2.09 Apartment, ~~Studio Efficiency~~**

A dwelling unit in a multi-family building consisting of not more than one habitable room, together with kitchen or kitchenette and sanitary facilities. (Ord. 38.22, 2/1/62; Ord. 38 (part), 3/15/55)

### **2.41-1.1 Gross Acreage**

Area of a site calculated to the centerline of bounding public streets and other public rights-of-way, including all areas dedicated for parks and trails, except that a site that is proposed for redevelopment shall exclude the area of existing bounding roadway rights-of-way, railroad rights-of-ways, and other public rights-of-way with the exception of all areas dedicated for parks and trails. (Ord. 38.759 (part), 4/2/02)

## **Section 4-“R1” Single-Family Residence District**

### **4.02 Principal Permitted Uses**

The following are the principal permitted uses in an R1 District.

4.02-4 Mobile homes subject to provisions of Subsection 54.134.

### **4.04 Conditional Uses**

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section 57. Any of the following uses which are marked with an asterisk shall not be allowed in the designated Hillside Area.

## **Section 8 “R4” Multi-Family Very High Density District**

### **8.04-6 Conditional Uses**

Public utility and public service structures, not including corporation yards, storage or repair yards and warehouses.

## **Section 17-“CO” Administrative and Professional Office District**

### **17.04-3 Conditional Uses**

Mortuaries, funeral homes, and crematories.

## **Section 18-"C1" Neighborhood Commercial District**

### **XI-10-18.03 Uses Permitted Subject to Receiving a Conditional Use Permit**

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section XI-10-57:

18.03-1 Arcades, with mechanical or electronic games or games of skill or science.

18.03-2 Automobile service stations with or without service bays. Entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line.

18.03-3 Book and rental libraries.

18.03-4 Cigar store (tobacco shop).

18.03-4.1 Small and large family child care home, and child care center.

18.03-5 Churches and other religious institutions.

18.03-5.1 Commercial athletic facilities, conducted wholly within a building, such as but not limited to health spas and gyms; tennis, handball or racquetball, etc.

18.03-6 Food stores, delicatessens, and supermarkets.

## **Section 19-"C2" General Commercial District**

### **XI-10-19.03 Uses Permitted Subject to Securing a Conditional Use Permit**

The following uses may also be permitted in their location if first approved by the Commission, as provided for in Section XI-10-57:

19.03-1 Arcades, with mechanical or electronic games or games of skill or science, excluding Adult Arcades as defined in Subsection 54.18.

19.03-2 Auction halls.

19.03-3 Auto repair shops of all kinds, radiators, paint, body, glass, brakes, upholstery and other types, if all operations are conducted wholly within a completely enclosed building.

19.03-4 Auto, mobile home, recreational vehicle and truck rental agency.

19.03-5 Auto, mobile home, recreational vehicle, truck and boat sales with accessory repairs and services. Said accessory repairs and services shall be conducted wholly within a completely enclosed building.

19.03-6 Auto sales, outdoor (new and used cars in operable condition only).

19.03-7 Automobile service stations with or without service bays. Entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line.

19.03-7.1 Billiard center.

19.03-8 Cabinet or carpenter shop if conducted wholly within a completely enclosed building.

19.03-9 Car wash.

19.03-9.1 Small and large family child care home, and child care center.

19.03-10 Cocktail lounges with or without live entertainment, excluding Adult Businesses as defined in Subsection 54.18.

19.03-11 Commercial laboratories, analytical chemists.

19.03-12 Commercial recreation, not conducted wholly within a building, such as but not limited to miniature golf, go-cart tracks, batting range, skateboard park, water slide, swimming pools, etc.

19.03-13 Contractors' yards and offices.

19.03-14 Churches.

19.03-15 Disinfection and extermination business.

19.03-16 Electric and neon sign shops if conducted wholly within a completely enclosed building.

19.03-17 Food stores, ~~such as supermarkets~~, convenience stores, etc.

## **Section 22-"TC" Town Center District**

### **XI-10-22.04 Conditional Uses**

The following are conditional uses in the Town Center District and may be applied for in any of the subareas, provided that it meets the purpose and intent of the Town Center District.

22.04-1 Alcoholic beverage sales, both on-site consumption or off-site sales.

22.04-2 Automatic teller machines (ATM's) or other type walk-up window facility.

22.04-2.1 Billiard center.

22.04-3 Bus terminal, cab stand or other transit facilities.

22.04-3.1 Small and large family child care home, and child care center. Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards.

22.04-3.2 Farmer's market, excluding flea market.

22.04-3-3 Food stores

22.04-4 Hotels/Motels, excluding Adult Motels/Hotels, as defined in Subsection 54.18.

22.04-5 Mailbox rentals.

22.04-6 Public and quasi-public uses, as defined in section 2.67 (b) and 2.67 (c), appropriate to or customarily located in the "TC" District and intended to serve the whole City and/or region.

22.04-7 Residential developments of between one (1) and twenty (20) dwelling units per gross acre, provided that the Commission makes a finding that the location of such a use is appropriate and in conformance with the purpose and intent of the Town Center District specified in Section 22.01 above.

22.04-8 Storage garages and off-street parking facilities.

22.04-9 Theater, restaurant, restaurant which includes internet usage for customers, bar, night club or other major entertainment facility, intended and designed to serve the City as a whole, excluding Adult Businesses, as defined in Subsection 54.18.

22.04-9.1 Vehicle-oriented window service.

22.04-10 Video rental store.

22.04-11 Any other retail business or service establishment, excluding Adult Businesses, as defined in Subsection 54.18, that the Commission finds not to be inconsistent with the purpose of this Chapter and will not impair the present or potential uses of adjacent properties.

## **Section 7 – “R3” Multi-Family High Density District**

### **7.07 Landscape and Private Open Space Requirements**

**7.07-1** A minimum of twenty-five (25) percent of the total lot area (not including paved parking area) shall be landscaped or private open space recreational facility ~~open space~~, exclusive of parking and vehicular traffic area and this shall be shown on site plan in detail for Planning Commission approval.

### **7.07.2 Landscape and Open Space Requirements**

An average of two hundred square feet of usable open space shall be provided for each dwelling unit. "Usable open space" shall mean any open space, the smallest dimension of which is at least ~~six (6) seven (7)~~ feet and which is not used as storage or for movement of motor vehicles: except that yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. At least thirty (30) percent of required open space shall be contiguous to and provide for private usable open space of the individual dwelling unit. (Ord. 38.57 (part), 6/18/64; Ord. 38 (part), 3/15/55)

### **7.09-1 Automobile Parking and Loading Areas**

For Multiple-Family dwellings, there shall be provided at the time of erection of a new dwelling or an addition to an existing dwelling at least two (2) permanent automobile off-street parking spaces for each dwelling unit plus additional guest spaces equal to fifteen ~~(15)~~20 percent of the total amount required in a Multiple-Family dwelling. All required parking spaces shall be located to the rear of the front setback line.

## **Section 8 – “R4” Multi-Family Very High District**

### **8.07-3 Park and Open Space Requirements for Residential Uses**

A minimum of one hundred (100) two hundred (200) square feet on the ground floor and sixty (60) square feet on the second level and above of "Usable Open Space" shall be provided for each dwelling unit. (Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)

## **Section 9-“AR” Agricultural Residential**

### **9.00 — AR Agricultural Residence District**

#### **XI-10-9.01 — Purpose**

~~———— To stabilize and protect the residential characteristics of certain portions of the hillside area where due to slope and inherent geologic problems it is necessary to maintain low intensity development for the public welfare. The AR District is intended~~

for semi-rural residential homes and services appurtenant thereto. (Ord. 38 (part), 3/15/55)

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~~XI 10 9.02 — Principal Permitted Uses~~

~~— The following are the principal permitted uses~~

~~— 9.02 1 Single family dwellings.~~

~~— 9.02 2 Planned unit developments subject to provisions of Subsection XI 10-54.07.~~

~~— 9.02 3 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any product at retail on the premises.~~

~~— 9.02 4 Mobile homes subject to provisions of Subsection XI 10 54.14. (Ord. 38.541, 4/20/82; Ord. 38 (part), 3/15/55)~~

~~XI 10 9.03 — Accessory Uses~~

~~— The following are the accessory uses permitted~~

~~— 9.03 1 Rooming and boarding of not more than two (2) persons.~~

~~— 9.03 2 Home occupations and professional offices in home as provided for in Subsection XI 10 54.08.~~

~~— 9.03 3 A State authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such home furnishes such care on a twenty four (24) hour a day basis.~~

~~— 9.03 4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection XI 10 54.09.~~

~~— 9.03 5 Family day care homes for not more than six (6) children. (Ord. 38 (part), 3/15/55)~~

~~XI 10 9.04 — Conditional Uses~~

~~— The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section XI 10 57.~~

~~— 9.04 1 Parks and playgrounds for community centers, owned and operated by a governmental agency or a non-profit community organization; permanent church buildings (except rescue mission and temporary revival), public service structures, not including corporation yards or storage or repair yards, warehouses; and golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).~~

~~— 9.04 2 Off street public parking areas.~~

~~— 9.04 3 Temporary tract offices and tract signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County expressway.~~

~~— 9.04 4 The raising of animals or fowl for commercial purposes, or the sale of any agricultural products at retail on the premises. (Ord. 38.633 (A) (part), 3/15/88; Ord. 38 (part), 3/15/55)~~

~~XI 10 9.05 — Height Regulations~~

~~———No principal building shall exceed either three and one half (3 1/2) stories or forty (40) feet in height, and no accessory building shall exceed seventy five (75) feet in height. (Ord. 38 (part), 3/15/55)~~

~~XI 10 9.06 — Area, Lot Width and Yard Requirements~~

~~———The following minimum requirements shall be observed, except where increased for conditional uses. The minimum requirement shall be one of the following for the district classification as designated on the Zoning Map.~~

<del>9.06 1 Lot Area:</del>	<del>AR 20 — twenty (20) acre.</del>
	<del>AR 15 — fifteen (15) acre.</del>
<del>9.06 2 Lot Width:</del>	<del>AR 20 — two hundred (200) feet.</del>
	<del>AR 15 — one hundred seventy five (175) feet.</del>
	<del>AR 10 — one hundred fifty (150) feet.</del>
<del>9.06 3 Front:</del>	<del>AR 20 — forty (40) feet.</del>
<del>Side &amp; Rear:</del>	<del>AR 15 — forty (40) feet.</del>

~~(Ord. 38.399, 9/20/77; Ord. 38 (part), 3/15/55)~~

~~XI 10 9.07 — Automobile Parking Restrictions~~

~~———9.07 1 For dwellings. There shall be provided at the time of erection of any dwelling at least two (2) permanently maintained parking spaces, on the same lot with the dwelling, for each dwelling unit. Such parking spaces shall be not less than ten (10) feet wide and twenty (20) feet long with adequate provision for ingress and egress. No automobile driveway to provide access shall be less than fourteen (14) feet in width.~~

~~———9.07 2 Repealed by Ord. 38.384. (Ord. 38.384, 10/26/76; Ord. 38 (part), 3/15/55)~~

~~XI 10 9.08 — Required Improvements~~

~~———The above parking areas shall be improved as provided in Subsection XI 10-54.03. (Ord. 38.355, 9/15/75; Ord. 38 (part), 3/15/55)~~

**Section 18 – “C1” Neighborhood Commercial District**

**18.03-6 Conditional Uses**

Food stores, delicatessens, and supermarkets.

**Section 19 – “C2” General Commercial District**

**19.02-1 Permitted Uses**

Any use permitted in the CO Administrative and Professional Office District and the C1 Neighborhood Commercial District.

**19.03-9 Conditional Uses**

Deleted Vocational schools (except schools which teach all types of acupressure, massage or similar procedures), if not found objectionable due to noise, odor, vibration or other similar health, safety or welfare basis.

**19.03-17 Conditional Uses**

~~Food stores, such as supermarkets, convenience stores, etc.~~

**19.03-32 Conditional Uses**

~~Public utility service yards, garages, and substations.~~ Public utility and public service use or structure.

**Section 21 – “HS” Highway Service District**

**21.03-17 Conditional Uses**

~~Public utility service yard, garages, and substations.~~ Public utility and public service use or structure.

**Section 22 – “TC” Town Center District**

**22.04 Conditional Uses**

Food stores

**Section 30 – “M1” Light Industrial District**

**30.03-13 Conditional Uses**

~~Vocational schools, including business, professional, technical and trade schools where training is conducted in a classroom setting and educational credits, degrees or certificates of completion are earned or granted.~~

**Section 31 – “M2” Heavy Industrial District**

**31.03-14 Conditional Uses**

~~Vocational schools, including business, professional, technical and trade schools where training is conducted in a classroom setting and educational credits, degrees or certificates of completion are earned or granted~~

**Section 35 – “MP” Industrial Park District**

**35.04-12 Conditional Uses**

~~Vocational schools, including business, professional, technical and trade schools where training is conducted in a classroom setting and educational credits, degrees or certificates of completion are earned or granted. (~~



## **Section 38 – “MXD” Mixed Use District**

### **38.08-1 Conditional Uses**

(d) Vocational schools, ~~if not found objectionable due to noise, odor, vibration or other similar health, safety and welfare basis.~~

### **38.03-3 Conditional Uses**

The following commercial service uses may also be permitted, provided their location is first approved by the Commission as provided for in Section 57, they are not Adult Businesses as defined in Subsection 54.18; and they are not located within one thousand (1,000) feet of another commercial service use listed below:

(a) Auto, recreational vehicle, and boat service uses (excluding commercial vehicles, trucks, buses, vans, and farm and construction equipment), including but not limited to: gasoline service stations, car washes, tire shops, towing without vehicle storage and auto repair shops of all kinds, radiators, paint, body, glass, brakes, upholstery, and other types if all operations are conducted wholly within a completely enclosed building. Entrances to the service bays shall not be open to the street but shall be designed to face the rear or interior side property line.

### **38.07-2 Park and Open Space Requirements for Residential Uses**

~~Each residential project shall provide adequate on-site usable open space or recreational facilities to the approval of the Planning Commission through the Site and Architectural Review (“S” Zone) process. A minimum of twenty-five percent (25%) of the total site shall be usable open space or recreational facilities. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas.~~

## **Section 39-“POS” Parks and Open Space District**

### **39.03-3 Conditional Uses**

Public utility and public service use and structures, facilities.

## **Section 54 – General Provisions**

### **54.19-4 Condominium Conversion**

Surplus Required for Conversion Application: An application for condominium conversion of existing multiple family rental housing units to residential condominium ownership shall not be approved unless there is a vacancy surplus of existing apartments which equals six (6%) percent or greater of the total number of such units, within the City, as of the most recent determination made pursuant to Section ~~7.14-3~~ 54.19-3; and if all of the adult tenants lawfully in possession of two-thirds of the units indicate their desire to convert such project to condominium ownership, in writing, to the City. In no

event shall a number of lots, parcels, units, or rights of exclusive occupancy proposed exceed the vacancy surplus by forty (40) percent. Nothing herein contained shall be construed to prevent the payment of any consideration by landlord to tenant, provided however, consent obtained by payment to a tenant shall not be considered by the Council to be a free and willing consent unless payment of the same consideration is made to all tenants regardless of consent.

#### **54.20-Density Bonus for Affordable Housing Developments (entire section)**

**54.20-1 Purpose.** The Density Bonus regulations are intended to encourage the provision of affordable housing in the community by granting density bonuses and other incentives to developers of residential projects that construct or otherwise provide for housing units that will be available for purchase or rent by senior citizens and lower income persons and households. The Density Bonus provisions are applicable in all zoning districts that allow residential development. This Ordinance is adopted in conformance with Chapter 4.3 of Title 7 of the Government Code, Section 65915, et seq.

**54.20-2 Density Bonus Authorization.** The City Council, after recommendation by the Planning Commission, may authorize an increase in allowable dwelling unit density for those residential projects that assist in meeting the lower income or senior housing needs of the community. When the Planning Commission and Council make a finding that a developer has complied with the requirements of Subsections 54.20-3 and ~~54.20-9, 54.20-12~~ the City Council, after recommendation by the Planning Commission, may award a density increase, with the approval of the project. The applicant shall submit site and architectural plans for the project (per Section 42.04 of this Chapter) for review and approval in conjunction with the Planning Commission and City Council consideration of the Density Bonus application. The Planning Commission shall hold at least one public hearing, prior to making its recommendation to the City Council. Upon receipt of the recommendation of the Planning Commission, the City Council shall hold at least one public hearing, prior to any final action on an application. Notice of hearing shall be given in accordance with the provisions of Section 64 of this Chapter.

#### **54.20-3 Density Bonus Conditions.**

A. ~~When a developer of housing agrees or proposes to construct at least: (1) twenty (20%) percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the California Health and Safety Code; or (2) ten (10%) percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety code; or (3) fifty (50%) percent of the total dwelling units of a housing development for senior citizen housing, as defined in Section 51.2 of the California Civil Code, the City shall either:~~

~~(1) Grant a density bonus and at least one concession or incentive, as defined in Subsection~~

~~54.20-4, unless the City makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs or for rents for the targeted units to be set as specified in Subsection 54.20-10; or~~

~~(2) Provide other incentives of equivalent financial value based upon the land cost per dwelling~~

~~unit.~~

~~B. If a developer agrees to construct both twenty (20%) percent of the total units for lower~~

~~income households and ten (10%) percent of the total units for very low income households,~~

~~the developer is entitled to one density bonus and one additional concession or incentive.~~

~~C. Additional bonuses, concessions and/or incentives may be granted by the City Council after recommendation of the Planning Commission or upon finding that the project provides a greater percentage of units for lower income households than those described in Subsection~~

~~54.20-3A and B. The regulations in this Section do not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land by the City, or the waiver of fees or dedication requirements.~~

#### **54.20-4 Definitions.**

~~A. For the purposes of Subsections 54.20-3A and B, "density bonus" means a density increase of at least twenty five (25%) percent over the otherwise maximum allowable residential density specified for the applicable zoning or overlay district (including Section 54.07-6(c) of this Chapter and Resolution No. 3489, as amended from time to time). The density bonus shall not be included when determining the number of housing units which is equal to ten or twenty (10 or 20%) percent of the total.~~

~~B. For the purposes of this Section, concession or incentive means any of the following:~~

~~(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements, which exceed the minimum building standards approved by the State Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in lot size, lot dimensions and building setbacks, and in the ratio of vehicular parking spaces that would otherwise be required.~~

~~(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial or other land uses will reduce the cost of the housing development, and if the commercial, office, industrial or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.~~

~~(3) Other regulatory incentives or concessions proposed by the developer or the City which result in identifiable cost reductions.~~

~~C. For purposes of this Section, "Housing Development" means one or more groups of projects for residential units constructed in the planned development of the City.~~

**54.20-3 Density Bonus Conditions**

- A. When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the city shall provide the applicant incentives or concessions for the production of housing units and childcare facilities as prescribed in this section.
- B. The city shall grant a density bonus and incentives or concessions described in Section 54.20-4 when the applicant for the housing development seeks and agrees to construct at least any one of the following criteria:
- (1) Ten percent (10%) of the total units in a housing development for lower income households as defined in Section 50079.5 of the State Health and Safety Code.
  - (2) Five percent (5%) of the total units in a housing development for very low-income households as defined in Section 5015 of the State Health and Safety Code.
  - (3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the State Civil Code.
  - (4) Ten percent (10%) of the total dwelling units in a condominium project as defined in subdivision (f) or in a planned development project as defined in subdivision (k) of Section 1351 of the State Civil Code for persons and families of moderate income, as defined in Section 50093 of the State Health and Safety Code.
- C. If the housing development meets criteria (1), (2), or (3) above, the density bonus shall be an increase of 20% over the maximum allowable residential density under the general plan and zoning ordinance. If the housing development meets criterion (4) above, the density bonus shall be an increase of 5% over the maximum allowable residential density under the general plan and zoning ordinance.
- D. If at least one of the above criteria is met, an additional density bonus shall be granted as per the following sliding scale:
- (1) An additional 2.5% density bonus for each increase of 1% Very- Low Income units above the initial 5% threshold;
  - (2) A density increase of 1.5% for each 1% increase in Lower-Income units above the initial 10% threshold; and
  - (3) A 1% density increase for each 1% increase in Moderate-Income condominium or planned development units above the initial 10% threshold.

E. The total of the density bonuses pursuant to paragraphs C and D above shall not exceed 35% for the proposed housing development.

#### **54.20-4 Concessions and Incentives**

Any project that meets the minimum criteria specified in Section 54.20-3.B for a density bonus is entitled to concessions depending upon the amount of affordable housing provided as follows:

- (1) For projects that provide either 5% of the units affordable to Very Low-Income households, 10% of the units affordable to Low-Income households, or 10% Moderate-Income condominiums, the developer is entitled to one concession;
- (2) When the number of affordable units is increased to 10% Very Low-Income units, 20% Lower-Income units, or 20% Moderate-Income condominiums, the developer is entitled to two concessions; and
- (3) When the number of affordable units is increased to 15% Very Low-Income, 30% Low Income, or 30% Moderate-Income household condominiums, the number of concessions is increased to three concessions.

Requested concessions shall be approved unless the City makes either of the following findings in writing and based on substantial evidence.

- a. The concession is not required in order to provide for affordable housing costs as defined in State Health and Safety § 50052.2, or for rents for the affordable units pursuant to Section 54.20-13.
- b. The concession would have a specific adverse impact as defined in State Government Code § 65589.5(d)(2) upon the public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

#### **54.20-5 Land Donation**

A density bonus of 15% over the maximum allowable residential density under the general plan and zoning ordinance is available to projects that donate land for residential use. The land must satisfy all of the following requirements prior to granting the density bonus:

- (1) Have the appropriate general plan designation and zoning to permit construction of units affordable to Very Low-Income households in an amount not less than 10% of the units in the residential development;
- (2) Be at least one acre in size or of sufficient size to permit development of at least 40 units; and

(3) Be served by adequate public facilities and infrastructure.

A density bonus based on land donation may be combined with the density bonus in Section 54.20-3; however, the maximum combined density bonus that can be granted is 35%. When the land is transferred, it must have all the permits and approvals necessary for the development of the Very Low-Income housing units. The land transfer shall occur prior to or concurrent with approval of the final subdivision map, parcel map, or residential development application. The land and affordable units must be subject to deed restrictions ensuring continued affordability. The city may require that the land be transferred to a developer instead of the city.

**54.20-6 Parking Standards**

If a project qualifies for a density bonus, the developer may request and the City must grant the following parking standards for the entire development project:

- (1) Zero to one bedroom-one on-site parking space
- (2) Two to three bedrooms-two on-site parking spaces
- (3) Four and more bedrooms- two and one-half on-site parking spaces.

These numbers are inclusive of guest parking and handicapped parking and may be tandem or uncovered but cannot be on street. The parking standards may be requested even if no density bonus is requested.

**54.20-7 Waivers and Modifications of Development Standards**

The City may not impose a development standard that makes it infeasible to construct the housing development with the proposed density bonus. In addition to requesting incentives and concessions, applicants may request the waiver of development standards and shall show that the waiver is necessary to make the housing units economically feasible. For the purpose of this section, development standards are defined as site or construction conditions that apply to a residential development pursuant to any local policy, resolution or regulation. The requested waiver shall be approved unless the City makes either of the findings set forth in Section 54.20-4

**54.20-5 54.20-8 Determination of Maximum Allowable Densities.** The maximum allowable density per gross acre prior to applying the density bonus shall be as specified in the Milpitas Zoning Ordinance for the applicable zoning or overlay district or PUD process, as listed in Sections 8.05-2 (R4 district), 22.04-7 (TC district), 38.05-4 (MXD district), 43.05 (TOD overlay district), and 54.07-6(c) (PUD process for R3 district) of this Chapter, and in City Council Resolution No. 3489 as amended from time to time (R1, R2 and R3 districts).

**54.20-6 54.20-9 Applicability.** The density bonus referred to in this Section shall apply to housing developments consisting of five or more dwelling units.

**54.20.7 54.20-10 Unit Type and Location.** All affordable units shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms

as the non-affordable units in the project, and shall be comparable with the non-affordable units in terms of appearance, materials and finished quality. The Planning Commission may recommend to the City Council modifying the requirements as to unit size or type, if it is found that such a modification would better serve the affordable housing need of Milpitas.

**~~54.20-8~~ 54.20-11 Agreement.** Prior to final building inspection and occupancy for a project containing affordable units, the applicant shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the affordability requirements. The agreement shall be approved by the Milpitas City Attorney prior to recordation.

**~~54.20-9~~ 54.20-12 Retaining Affordability.** A developer shall agree to, and the City shall insure continued affordability of, all lower or very low-income density bonus units for thirty (30) years or a longer period of time, if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. *If the City does not grant at least one (1) additional concession or incentive, in addition to a density bonus as specified in Subsection 54.20- 3, the developer shall agree to, and the City shall ensure continued affordability for a minimum of ten (10) years of all lower or very low income housing units receiving a density bonus.*

**~~54.20-10~~ 54.20-13 Affordable Rents.** Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of sixty (60%) percent of the Santa Clara County median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30%) of fifty (50%) percent of County median income. (Ord. 38.761 (part), 5/20/03).

**~~54.20-14.~~ Relation to statute.** Density bonus requirements not specified in these regulations shall be governed by the State Density Bonus Law, Government Code section 65915, et seq.

## **Section 57 – Conditional Uses Permitted by the Commission**

### **57.01 Considerations, Finding and Determination**

57.01(a) Conditional Use Permit. A permit issued by the city to allow a particular land use which would not otherwise be permitted as a matter of right in a zoning district, where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the Comprehensive Master Plan. A Conditional Use Permit may only be issued for those uses listed as Conditionally Permitted in each Zoning District ~~(and the uses listed as conditionally permitted within this Chapter).~~ Conditional Use Permits apply to the land or tenant space and not the permit holder.

57.01(b) In reviewing conditional use permit applications, the Planning Commission shall be empowered to approve, conditionally approve or disapprove said

conditional use permit application based on normal planning considerations including, but not limited to, suitability of site; conformance to the Master Plan; harmony with the various elements or objectives of the Master Plan; the most appropriate use of the land throughout the City; stabilization and conservation of the value of property; traffic flow; circulation; safety for vehicular and pedestrian traffic; imposition of noises, odors and health and safety hazards upon nearby residential area; provision of adequate light, air and reasonable access; securing safety from fire and other dangers; prevent overcrowding of land; facilitating adequate provision for transportation and in general, to promote the public health, safety, peace, morals, comfort and welfare; prevention of neighborhood deterioration and blight; the objectives of zoning and planning in the community and the effect upon the City's general welfare of this proposed use in relation to surrounding uses and the community. Such conditional uses include but are not limited to the following:

~~57.01 1~~

- ~~(1) Animal hospitals.~~
- ~~(2) Auto wrecking or salvage yards.~~
- ~~(3) Automobile service stations and auto car washes.~~
- ~~(4) Churches.~~
- ~~(5) Clinics.~~
- ~~(6) Community centers and private clubs or lodges.~~
- ~~(6.1) Condominiums and condominium conversions.~~
- ~~(7) Golf courses.~~
- ~~(8) Mobile home parks.~~
- ~~(9) Mortuaries and funeral homes.~~
- ~~(10) Parks and playgrounds.~~
- ~~(11) Public camps.~~
- ~~(12) Schools, elementary, high and junior college.~~
- ~~(13) Vehicle oriented window service facility.~~
- ~~(14) Moved or relocated buildings prior to issuance of a moving permit from the Chief Building Inspector.~~

~~57.01 2 Deleted by Ord. 38.662 (A) (part).~~

~~57.01 3 Deleted by Ord. 38.662 (A) (part).~~

(Ord. 38.706 (part), 7/16/96; Ord. 38.491, 8/21/79; Ord. 38.485, 7/3/79; Ord. 38.395, 9/20/77; Ord. 38.180, 6/17/69; Ord. 38 (part), 3/15/55)

~~XI 10 57.02 Additional Uses Permitted~~

~~The Commission may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the Comprehensive Master Plan. However, any of the following uses which are marked with an asterisk shall not be allowed in the designated Hillside Area.~~

~~57.02 1(\*) Airport or aircraft landing field.~~

~~57.02 1.1 Helicopter pads for medical evacuation purposes.~~

~~57.02 2(\*) Cemetery.~~

~~57.02 3(\*) Columbarium, crematory or mausoleum.~~



- ~~57.02 4(\*) Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.~~
- ~~57.02 5 Educational institution.~~
- ~~57.02 6 Government enterprise (Federal, State and Local).~~
- ~~57.02 7 Hospital or sanitarium.~~
- ~~57.02 8 Library or museum, public.~~
- ~~57.02 9 Nursery or greenhouse.~~
- ~~57.02 10 Park, playground, or recreational or community center.~~
- ~~57.02 11 Philanthropic institution.~~
- ~~57.02 11.1(\*) Correctional facility.~~
- ~~57.02 12 Private club.~~
- ~~57.02 12.1(\*) Fraternity or sorority house.~~
- ~~57.02 13 Public utility and public service use or structure.~~
- ~~57.02 14 Radio or television transmitter.~~
- ~~57.02 15 Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.~~
- ~~57.02 15.1 Wireless Communication Facility.~~

~~It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.~~

~~Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:~~

- ~~A. Receive only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:~~
  - ~~1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and~~
  - ~~2. All required building permits are obtained.~~
- ~~B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:~~
  - ~~1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and~~

~~2. All required building permits shall be obtained.~~

~~C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy two (72) hours or less.~~

~~57.02 16 Without limitation to the generality of the provisions of Section XI 10-57 et seq., conditional use may also be granted to accomplish any of the purposes set forth in Subsection XI 10-57.02.~~

~~57.02 17 Permit in the R Districts, public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial district.~~

~~57.02 18 Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.~~

~~57.02 19 Permit the addition or enlargement of a non-conforming building or structure in any district other than R1, R2 and R1-H, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.~~

~~57.02 20 Permit in districts limiting the height to two and one half (2-1/2) stories, thirty five (35) feet, or three (3) stories, forty five (45) feet, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six (6) stories or seventy five (75) feet, provided, that the front and side yard requirements for such buildings in the "R3" District are complied with.~~

~~57.02 21 Permit the use of a noneconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such noneconforming building is located.~~

~~57.02 22 Permit a less restricted use in a more restricted district as follows: any "C" District use in any other "C" District and "M1" use in the "C2" Districts; any "M2" use in an "M1" District; provided such use, due to its limited nature, modern devices, or building design, will be no more objectionable than the uses permitted in such district.~~

~~57.02 24 Permit temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid~~

~~building permit. Trailers shall be removed upon cessation of permitted construction activity.~~

~~57.02-25 Permit the reduction in the lot width requirements.~~

~~57.02-26 Permit agricultural uses including ranch, farm dwellings and quarters, accommodations or areas for transient labor, such as labor cabins or camps. (Ord. 38.760 (2, 3), 9/17/02; Ord. 38.676, 11/17/92; Ord. 38.633(A) (part), 3/15/88; Ord. 38.629(A) (part), 1987; Ord. 38.92, 12/6/66; Ord. 38 (part), 3/15/55)~~

#### XI-10-57.023 Conditional Use--Procedure

57. 023-1 Written application for the approval of uses referred to in Section 57 shall be filed in the office of the Planning Director upon forms prescribed for that purpose.

57. 023-2 A fee shall be paid upon the filing of each application for a Use Permit in accord with a schedule adopted by Council Resolution.

57. 023-3 The Planning Commission shall hold a public hearing on said application upon such notice as is required in Sections 64.01 and 64.02 of this Chapter.

57. 023-4 After the conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose or disapprove the application.

(a) The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.

57. 023-5 Approval may be granted by the Planning Commission, or by the City Council upon appeal or within the Hillside District, of a Use Permit application in accordance with this chapter if all of the following findings are made, based on the evidence in the public record:

(a) The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;

(b) The proposed use is consistent with the Milpitas General Plan; and

(c) The proposed use is consistent with the Milpitas Zoning Ordinance. (Ord. 38.706 (part), 7/16/96; Ord. 38.92, 12/6/66; Ord. 38 (part), 3/15/55)

#### XI-10-57.034 Consideration of Use Permit Pending Zoning Amendment

Upon the close of a public hearing before the Planning Commission on the question of an amendment to this Chapter to change property from one (1) zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in Section XI-10-57. The Commission may conditionally impose such requirements and regulations upon the subject property and use as the Commission is authorized to impose by Section XI-10-57 and may conditionally approve Use Permits; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific recommendation of the Planning Commission and

until the Ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect.

## **Section 64-Notice and Appeal**

### **64.02 Manner**

Manner of giving notice. Whenever notice of hearing is required by this Chapter for any of the following matters:

64.02-1 For pre-zoning of unincorporated land; an amendment to the provisions of this Chapter (including Changes of Zone); an application for a variance or a conditional use permit or new "S" Zone and amendments pursuant to Section 42.10 or for revocation, suspension or modification of the same, or an appeal from the action taken thereon, notice shall be given as per State of California Government Code Section 65091 and by the following:

- a) Publishing the notice in a newspaper of general circulation within the City.
- b) Posting one (1) sign notice per 1000 lineal feet of property street frontage in a conspicuous place on the affected property visible from the street frontage. If the affected property has no street frontage, no less than one (1) sign notice shall be required to be posted.
- c) Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to all property owners and residential renters within three hundred (300) feet of the subject parcel's property boundaries. Noticing for Large Family Child Care Homes shall be conducted pursuant to Section 54.16-2.1. The Planning Director shall have the discretion to require a 1,000 feet notification requirement for public hearings, if the project is deemed to be potentially controversial.

~~TITLE XI, CHAPTER 1, SECTION 4 OF THE MILPITAS MUNICIPAL CODE...~~  
SUBDIVISION ORDINANCE

**Section 4.01-5 Filing and Approval of Tentative Map**

~~A Condominium and/or A multifamily~~ Condominium Conversion Tentative Map shall be subject to an approved Conditional Use Permit as specified in the Milpitas Zoning Ordinance, Title XI, Chapter 10, Section ~~54.19.7.14~~.

**Section 9.06-1 Amount of Land to be Dedicated**

The amount of land required to be provided as park land pursuant to this section in the adopted Midtown Specific Plan Area shall be the figure in which is the result of multiplying the project's estimated population (as calculated in Section 9.05) and 152.45 square feet (3.5 acres/1,000 people). In the Midtown Specific Plan Area at least, two (2) of every three and a half (3 ½) acres of the required parkland requirement shall be provided as public park land (57.4%).

SECTION 4. Publication and Effective Date. Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.

SECTION 5. Severability. In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

9/2/05

ISSUE NO.	ISSUE NO.	AFFECTED SECTIONS	PROPOSED SOLUTION	WHY?
	DEFINITIONS			
1	Definition of "food store"	18.03-6 19.03-17 22.04-3	Add definition of a food store and call out in various appropriate districts.	Example: Text uses "food store" and "supermarket"; provides clarification
2	Definition of "vocational school"	2.78-1 19.02-9 (deleted) 19.03 30.03-13 31.03-14 35.04-12 38.03-2(d)	Move the definition found in 19.02 to "definitions" section of ordinance for clarification. Check wording throughout zoning ordinance for consistency.	Consistency within M1, M2, MP, and MXD
3	Definition of "redevelopment"	2.67-2	Clarification and definition of redevelopment, as used throughout the zoning ordinance to assist in clarifying gross acreage	Needed a definition of redevelopment for calculating gross acreage, since redeveloped sites are allowed to not count certain right of ways due to the redevelopment and infill nature of these sites compared to brand new subdivisions.

4	Definition of "infill development"	2.43-1	Add new definition	To help clarify that a project which includes an existing vacant site is also considered a redevelopment project; related to calculation of gross density for redevelopment projects.
5	Definition of "gross acreage" infill development by artificially increasing density.	2.43-1	Added new language that allows redevelopment projects to not include existing rights-of-ways into the density calculation.	Numerous developers have had issues with the current method the City calculates density. Requires a higher number of dwelling units for gross. The proposed method is similar to other cities in the region.
6	Clarify "efficiency apartment" definition	2.09	Provide consistency throughout ordinance	The current definition states "efficiency apartment", however ordinance text states "studio".
7	Definition of "open space recreation facility"	2.60	Add definition	Provides menu of examples.

	Miscellaneous Clarifications			
8	Small and large family childcare in homes needs to be added to home occupation section since they are home occupations.	54.08	Small Family Day Care Home (8 or fewer children) and Large Family Day Care Homes (9 or more children) are allowed as accessory uses in any single family dwelling. Add an exemption section in the home occupation section of the zoning ordinance so general home occupation regulations don't apply	Compliance with revised State law and City's Child Care Master Plan, 2002
9	Amend Section 54.16-2 to make it clear that a use permit is required if the administrative permit requirements are not met and to limit notification radius to 100 feet rather than the customary 300 feet and to note that there is no public hearing unless someone who receives a	54.16-2 64.02-1	Amend ordinance to note this. State laws governing child day care homes/approval process.	Compliance with revised State law.



	notice about the family child care home requests it as per state code Section 1597.46 (3).			
10	4.02-4 references 54.13, but should reference 54.14	4.02-4	Edit section	Consistency
11	38.03-3a language should mirror 38.03-1d regarding types of vehicle sales and repair in MXD	38.03-3a	Add language from 38.03-1d to 38.03-3a regarding recreation/auto and boat service uses	Clarity on whether or not it is limited to automobiles
12	Clarify multifamily condominium conversion procedure in Subdivision ordinance and reference Section 54	4.01-5		Since ordinance was originally adopted, new types of non-residential condominium conversions have evolved. Thus, it needs to be made clear that condominium conversion procedures only apply to residential, specifically multi-family
13	Update reference to proper Section 54.19-3	54.19-4		Correct to reflect proper code reference.
14	Clarify that reference to acres in the land dedication section of the Subdivision Ordinance refers to parkland	9.06-1	Insert words "parkland requirement"	Add language to clarify reference to acres as being parkland and not project areas.

15	Remove Agricultural Residential (AR) zoning district from the ordinance since it no longer exists on the zoning map. (Old hillside residential area.)	Section 9	Remove entire zoning district from ordinance	This zoning designation no longer appears on our zoning map. Used to be the old zoning for the hillside area.
<b>Codify-ordinances/uses</b>				
16	Codify PC's 2/11/04 determination of permitted uses in M1, M2, and MP to include business-to-business printing operations.	30.02 31.02 35.02	Add into permitted uses section "printing business"	Codify Planning Commission's 2004 use determination regarding business-to-business print shops
17	Codify PC's 9/24/03 determination that after-market auto part sales are allowed in HS district. However, modify in such a way to allow sales only as ancillary use.	21.02	Include in permitted uses in HS zoning district	Codify use determination, however modify to preserve intent of HS District as non-retail district, except for bulky items that are associated with large deliveries and need for easy highway access. Business requesting use determination will not be made nonconforming.
18	Codify Planning Commission's past approval	53.23	The parking ratio for this type of facility is proposed to be	The Planning Commission has continually approved

	of athletic facility parking ratio recommended by staff since the code does not contain a requirement.		3.5/1000 square feet.	gym/fitness facilities at the 3.5/1000 ratio. The City has not had any issues with this ratio at approved existing gym/fitness facilities.
19	Codify staff interpretation regarding distribution, wholesale & breeding of tropical fish.	30.02-8.1	Add fish breeding and wholesale distribution while entirely indoors as a permitted use in the M1 district.	Add distribution, wholesale and breeding of exotic fish not clearly called out in our zoning ordinance.
20	Applicant request to add wholesale business to HS as permitted use	21.02-38.1	Add wholesale and discount merchandise broker businesses to the permitted uses section of the HS Zoning District (already permitted use in C2)	Due to a request by an applicant that the HS district severely limits the type of businesses that can locate in this zoning district.
21	Move conditional uses listed in Section 57 to each appropriate zoning district for ease of reference and reevaluate appropriateness of such conditional uses in all districts.	57.01 57.02 57.03 57.04	Take all the uses allowed as a conditional under Section 57.02 and list them individually in each zoning district. In addition, certain conditional uses were intentionally not carried over into certain zoning districts due to their non-compatibility with the purpose of the individual	

			<p>zoning districts. Also, Section 57.01 was reorganized to combine language from another subsection that was no longer needed.</p> <p>This modification includes the following changes:</p> <ol style="list-style-type: none"><li>1) Adding Farmer's Market to all zoning districts in the City to facilitate relocation of the City's farmer's market</li><li>2) Not adding non-compatible uses as a conditional use in residential districts: airports, correctional facilities, private clubs, and agricultural uses</li><li>3) Add fraternity and sorority homes to all non-residential districts that allow educational institutions as a conditional use permit.</li></ol>	
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			<p>4) Remove agricultural uses from commercial and industrial districts</p> <p>5) Allow less intensive permitted and conditional uses in more intensive areas, such as allowing CO uses in C1, allowing CO in C2, allowing C1/C2/CO uses in TC district.</p> <p>6) Add C1 conditional uses to C2 conditional uses</p> <p>7) Remove natural resource development, nursery and greenhouses, correctional facilities and agricultural uses from the Town Center zoning district</p> <p>8) Remove parks, playgrounds, recreational and community centers from M1 and M2 industrial districts</p>	
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			<p>9) Add veterinary clinics and animal hospitals as a conditional use to the MP zoning district, as these are compatible uses to the purpose of the Industrial Park district</p> <p>10) Remove airfields, cemetery, columbarium, crematory , mausoleum, natural resource development, nursery, correctional facility and agricultural uses from the Mixed Use district</p> <p>11) Remove non-public type of uses from the POS district; except for wireless facilities, reverse vending machines, and agricultural uses</p>	
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New Items				
22	Reduce minimum 200 square foot usable open space required for each unit given number of use permits approved recently. MXD open space requirements don't match those of the R4 district. Modify usable open space definition in R3 to match definition of usable open space with regards to minimum dimension	7.07.2 8.07-3 38.07-2 38.07-3	Modify 200 sq ft requirement. Of usable open space per unit and replace with 100 sq ft for ground floor and 60 sq ft for 2 <sup>nd</sup> floor and above. Match the usable open space standards in R3 with usable open space definition. Have the Mixed Use (MXD) park and open space requirements of no minimum percentage of the lot area match those in R4. (25% of lot area)	Depending on the size of the units, the 200 sf requirement has been onerous for developers and often would not result in quality building architecture if met. Survey of California cities showed that 200 sq ft a high requirement (48 % of the surveyed cities require 100 sq ft or less).  Matched the MXD amount of park and open space with R4 and modified the usable open space standard in R3 with respect to the minimum open space dimension in the definition of usable open space.
23	Change the approval authority for all applications that include a density bonus	54.20-3	Add language stating that all projects with a Density Bonus will have all portions of the	Due to awkwardness of approving a portion of a project at Planning

	to be within the purview of City Council rather than Planning Commission.		project approved by City Council.	Commission and City Council, require associated permits to be approved by Council. Density bonuses require Council public hearing.
24	Correct guest parking discrepancies within the R3, R4 and MXD district.	7.09-1 8.06-1(d) 38.06-3(a)(4)	Require 15% guest parking in R3, R4, and MXD, whether or not in Midtown.	For R3 projects in the Midtown Area the guest parking requirement of 20% is inconsistent with the Midtown Policy of a 15% parking requirement.
25	Density Bonus-update our density bonus section to incorporate SB 1818.	54.20		To comply with new State law.
26	Lack of any recreational facility standards. Thus it is difficult to require certain types of amenities, yet credit is given towards public parkland dedication. This places a greater burden on cities to build parks.	2.60-1 7.07 8.07 38.07	Add definition of open space recreational facility and add standards that multi-family developments must meet in the proper MF residential districts	Expand private open space requirement in R3, R4, and MXD to require a variety of open space constructed and a minimum of five (5) types for large projects (100 + units) so that landscaping alone cannot meet the requirement.